

Pro Se 2 (Rev. 12/16) Complaint and Request for Injunction

UNITED STATES DISTRICT COURT

United States Courts
Southern District of Texas
FILED

for the

Southern District of Texas



SEP 14 2022

____ Galveston_ Division

Nathan Ochsner, Clerk of Court

Gary Duve
12730 Tri City Beach Road
Baytown, TX 77523

Case No. _____

(to be filled in by the Clerk's Office)

*Plaintiff(s)**(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)*

-v-

Instacart
50 Beale Street Suite 600
San Francisco CA 94105*Defendant(s)**(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)*

COMPLAINT AND REQUEST FOR INJUNCTION

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Gary Duve
Street Address	12730 Tri City Beach Road
City and County	Baytown
State and Zip Code	Texas 77523
Telephone Number	203 9474274
E-mail Address	rpmsgary@gmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Pro Se 2 (Rev. 12/16) Complaint and Request for Injunction

Defendant No. 1

Name	<u>Instacart</u>
Job or Title <i>(if known)</i>	<u>Large corporation??</u>
Street Address	<u>50 Beale Street Suite 600</u>
City and County	<u>San Francisco</u>
State and Zip Code	<u>California 94105</u>
Telephone Number	<u>1-888-246-7822</u>
E-mail Address <i>(if known)</i>	<u>apoorva@instacart.com</u>

Defendant No. 2

Name	<u></u>
Job or Title <i>(if known)</i>	<u></u>
Street Address	<u></u>
City and County	<u></u>
State and Zip Code	<u></u>
Telephone Number	<u></u>
E-mail Address <i>(if known)</i>	<u></u>

Defendant No. 3

Name	<u></u>
Job or Title <i>(if known)</i>	<u></u>
Street Address	<u></u>
City and County	<u></u>
State and Zip Code	<u></u>
Telephone Number	<u></u>
E-mail Address <i>(if known)</i>	<u></u>

Defendant No. 4

Name	<u></u>
Job or Title <i>(if known)</i>	<u></u>
Street Address	<u></u>
City and County	<u></u>
State and Zip Code	<u></u>
Telephone Number	<u></u>
E-mail Address <i>(if known)</i>	<u></u>

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*



Federal question



Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.
 9 U.S.C. § 2 (Validity, irrevocability, and enforcement of agreements to arbitrate), 42 U.S.C. § 12101 (Americans with Disabilities Act), 15 USC 45 (Unfair methods of competition unlawful; prevention by Commission, would use rules by the FTC under section 5 of this act), 18 U.S.C. 1343 (Fraud by wire, radio, or television)

B. If the Basis for Jurisdiction Is Diversity of Citizenship**1. The Plaintiff(s)****a. If the plaintiff is an individual**

The plaintiff, *(name)* Gary Duve, is a citizen of the
 State of *(name)* Texas.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated
 under the laws of the State of *(name)* _____,
 and has its principal place of business in the State of *(name)* _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)**a. If the defendant is an individual**

The defendant, *(name)* _____, is a citizen of
 the State of *(name)* _____. Or is a citizen of
(foreign nation) _____.

b. If the defendant is a corporation

The defendant, (name) Instacart, is incorporated under the laws of the State of (name) California, and has its principal place of business in the State of (name) California.
 Or is incorporated under the laws of (foreign nation) _____, and has its principal place of business in (name) _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because *(explain)*:

Approximate damages are \$172,663.87 including Texas sales tax. This is the cost of the closest alternative available to replace the services Instacart promised to provide in a timely manner. It reflects the current cost of a Plaid Tesla Model X with full self driving that can be delivered within approximately a month. If the compensation is federally taxable or if prices change, I will seek to alter the damage request. A non-Plaid Model X will not arrive until Mar-Jun of 2023.

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the injunction or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. Where did the events giving rise to your claim(s) occur?

On Friday September 9, 2022 at my home Comcast internet was down. I elected to connect my Windows PC via a hotspot connection using my Samsung Android phone via T-Mobile. Within seconds of making the order (for 2 gallons of whole milk and IIRC 12 or so Diet Peach Snapples 64 oz. I think from Krogers) an email and text message came from Instacart indicating my account was suspended due to suspected fraud. I called senior support (meaning elderly), and was sent a link to scan an image of the debit card being used. The link did require me to disable security features on my phone (making me less safe) and failed to scan the card. At which point I was directed to provide an official government ID image and the credit card through the same non-functional web link. I have lost trust in Instacart.

B. What date and approximate time did the events giving rise to your claim(s) occur?

This would be on Friday September 9, 2022 at approximately 9:22 AM. I have been a customer of Instacart for over 3 years (this is half way through my 4th year) and they provide shopping services I and my 100% military disabled veteran wife depend on them. Instacart in it's wisdom has elected to void my account (it can not be logged in to for review), claimed it suspects fraud (which is hard to verify as Instacart won't let me log in), and says it is incapable of having the security department people contact me or for me to contact them. Even if they called me, they do not have a method for me to verify they are who they say they are. At this time I believe Instacart has my pre-paid annual fee, but has entirely suspended my account, is refusing any support and offers no venue for remediation.

- C. What are the facts underlying your claim(s)? *(For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)*
 Instacart voided my pre-paid account, ceased permission to log in, made vague claims of suspected fraud, but also made it impossible to check if there was fraud. Provided a non-functional app, demanded personal information I do not believe they are entitled to, and have provided no method of rectifying this situation. In lieu of their unilaterally voiding their contract with me, I request they not be permitted to re-instate it without my consent. I believe the binding arbitration agreement is no longer active due to actions of Instacart to unilaterally terminate service, in my opinion they have severed the binding arbitration agreement. I seek relief in a federal court, and seek to have Instacart prevented from invoking any arbitration agreement as Instacart terminated their agreement unilaterally and there exists at this time no binding arbitration agreement between parties. Though Instacart does still hold onto my pre-paid annual membership. Replacement of Instacart will be expensive. Our local Wal-Mart does not deliver, my 2006 Ford Expedition has no working air conditioning, and it is difficult to impossible for me to shop.
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IV. Irreparable Injury

Explain why monetary damages at a later time would not adequately compensate you for the injuries you sustained, are sustaining, or will sustain as a result of the events described above, or why such compensation could not be measured.

I lack a reliable vehicle to shop and moved to a food desert after verification Instacart would serve my shopping needs. I am diabetic, morbidly obese, old, have difficulty walking, am experiencing kidney failure, and with the help of my family, doctors and Instacart have managed to lose nearly 100 lbs over the past 2 years. I moved to my Texas home in hopes of increasing my ability to lose weight and under the assumption Instacart would continue to function as the lifeline it has been for years to me. Instacart permits me to shop online at many stores, often with no mark up in prices, and get delivery within hours. The range of stores is extensive, and this allows me to order a diet which enables weight loss and helps lower food prices. I can shop for the lowest price for many products in a wide region with Instacart and not have to shop or drive to the store. I have been advised my weight is shortening my life, and Instacart has been helpful as a part of my long term weight loss plan. As the company has unilaterally terminated service to me, I am concerned my life will be at risk due to limited ability to shop and higher costs for food due to inability to price different stores. I maintain Instacart's actions jeopardize my life.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

I believe in suspending my account, and not permitting any redress to reactivate it, Instacart has voided its promise of service and has also released me from any arbitration agreement. I seek as damages only a vehicle capable of safely making a trip to and from the supermarkets we used to use with Instacart. My hope is there will be no income tax on damages, if there is I will seek the additional cost of the vehicle to cover any federal tax. I would ask the vehicle be provided to myself and my disabled wife, as she also is impaired. I do not believe we will outlive a new Model X or if we do, another venue will exist besides Instacart within 20 years. I believe my life expectancy is shortened by Instacart's refusal to provide prompt service or redress or even to specify what fraud they believe has occurred. I have lost trust in Instacart and believe they may try to reimpose arbitration which will preclude remediation of the sort sought here. I tried a model Y with my son about a year ago and did not fit comfortably, I was unable to sit in the driver seat. A model X is large enough to hold me safely.

VI. Certification and Closing


Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 09/14/2022

Signature of Plaintiff



Printed Name of Plaintiff

Gary Duve

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address